

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
DIVISION OF JUDGES**

**800 RIVER ROAD OPERATING  
COMPANY, LLC d/b/a CARE ONE  
AT NEW MILFORD**

**and**

**Case 22-CA-204545**

**1199 SEIU UNITED HEALTHCARE  
WORKERS EAST**

**COUNSEL FOR THE GENERAL COUNSEL'S POST-HEARING BRIEF  
TO THE ADMINISTRATIVE LAW JUDGE**

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## **I. STATEMENT OF THE CASE**

On March 30, 2018, the Acting Regional Director for Region 22, acting for and on behalf of the General Counsel for the National Labor Relations Board, issued a Complaint and Notice of Hearing alleging that 800 River Road Operating Company, LLC d/b/a CareOne at New Milford (“Respondent”) engaged in unfair labor practices affecting commerce within the meaning of Section (a)(1) and (5) of the Act. [GC 1(e)].<sup>1</sup> In its Answer to the Complaint, Respondent generally denied the unfair labor practices set forth in the Complaint. [GC 1(g)]. Pursuant to the Notice of Hearing, a hearing in the instant case was held before Administrative Law Judge Benjamin Green on July 10, 2018, in Newark, New Jersey.

## **II. ISSUES**<sup>2</sup>

1. Did Respondent unilaterally decrease bargaining-unit employees’ hours, in violation of Section 8(a)(5) of the Act?<sup>3</sup>
2. Did Respondent unilaterally suspend and terminate bargaining-unit employees, in violation of Section 8(a)(5) of the Act?

## **III. STATEMENT OF THE FACTS**

### **Background**

Respondent is engaged in the business of operating a rehabilitation and nursing facility located in New Milford, New Jersey. (GC 4)

After winning the March 9, 2012 Board conducted election in Case 22-RC-073078, followed by subsequent proceedings concerning objections and exceptions, the Union was

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<sup>1</sup> As used herein, “GC” refers to the General Counsel’s exhibits, “R” refers to the Respondent’s exhibits, and “Tr.” refers to the pages of the official transcript.

<sup>2</sup> On June 29, 2018, the Regional Director for Region 22 issued an Order withdrawing Complaint allegations 27(a) through (h), 28(a) through (f) and 29. [GC 1(j)]. On July 10, 2018, the parties entered into an Informal Settlement Agreement which settled Complaint allegations 18 and 26(a) and (b). (GC 3).

<sup>3</sup> Regarding this allegation, General Counsel is withdrawing the theory that Respondent unilaterally changed its practice of hiring employees at 40 hours per week, and is pursuing the theory explained at trial that Respondent unilaterally decreased the bargaining unit employees’ hours.

certified by the Board on January 9, 2013, effective March 9, 2012, as the exclusive collective-bargaining representative of the following bargaining unit of employees employed by Respondent:

All full time and regular part time nonprofessional employees including licensed practical nurses, certified nursing aides, dietary aides, housekeepers, laundry aides, porters, recreation aides, restorative aides, rehabilitation techs, central supply clerks, unit secretaries, receptionists and building maintenance workers employed by the Employer at its New Milford, New Jersey facility, but excluding all office clerical employees, cooks, registered nurses, dieticians, physical therapists, physical therapy assistants, occupational therapists, occupational therapy assistants, speech therapists, social workers, staffing coordinators/schedulers, payroll/benefits coordinators, MDS specialists, MDS data clerks, account payable clerks, account receivable clerks, all other professional employees, guards and supervisors as defined in the Act.

[GC 2(c) – (i)]

For over four years thereafter, Respondent continued to test the Union's certification by refusing to bargain with the Union, prompting the Union to file an unfair labor practice charge in Case 22-CA-097938. Finally, on March 21, 2017, the United States Court of Appeals for the District of Columbia issued a Mandate regarding the Court's Order, enforcing the Board's Order which granted summary judgment, finding that Respondent had unlawfully refused to bargain with the Union and failed and refused to furnish the Union with requested information that is relevant and necessary to the Union's performance of its functions as the collective-bargaining representative of the Respondent's Unit employees. [GC 2(j)-(p)].

### **Respondent Unilaterally Decreased Bargaining Unit Employees' Hours**

During the period that Respondent was testing the Union's certification (from January 9, 2013 to March 21, 2017), Respondent unilaterally changed the terms and conditions of employment of the bargaining unit employees. In this regard, the evidence shows that during 2014 and 2015, Respondent unilaterally reduced the work hours of the following 20 bargaining-

unit employees<sup>4</sup>. It is stipulated, and Respondent admitted, that it had not provided the Union with notice or an opportunity to bargain prior to implementing these reductions. (GC 4)

**Payroll Period of Decrease: July 19, 2014**

| <b>Name</b>       | <b>Title</b> | <b>Date of Hire</b> |
|-------------------|--------------|---------------------|
| Bustos, Benjamin  | Dietary Aide | 5/11/2004           |
| Coronado, Evelyn  | Dietary Aide | 8/9/2000            |
| Farr, Elaine      | Dietary Aide | 5/26/1993           |
| Fontanez, Enrique | Dietary Aide | 8/2/2004            |
| Ricarze, Vicente  | Dietary Aide | 3/18/2005           |
| Tolentino, Allan  | Dietary Aide | 3/24/2004           |
| Varghese, George  | Dietary Aide | 7/5/2004            |
| Bazile, Desinette | Housekeeper  | 4/27/2002           |
| Benoit, Julianne  | Housekeeper  | 3/3/2006            |
| Murray, Paulette  | Housekeeper  | 6/6/2006            |
| Abouzeid, Charles | Laundry Aide | 2/22/1996           |
| Ramkhalawan, Jean | Laundry Aide | 12/13/2004          |
| Irabon, Edgardo   | Porter       | 11/19/2007          |

**Payroll Period of Decrease: August 16, 2014**

| <b>Name</b>     | <b>Title</b>       | <b>Date of Hire</b> |
|-----------------|--------------------|---------------------|
| Hegarty, Andrew | Maintenance Worker | 11/27/2012          |

**Payroll Period of Decrease: February 1, 2014**

| <b>Name</b>       | <b>Title</b>         | <b>Date of Hire</b> |
|-------------------|----------------------|---------------------|
| Abraham, Mariamma | Recreation Assistant | 7/2/2007            |
| Boby, Rosilin     | Recreation Assistant | 8/23/2011           |
| Jiminez, Sara     | Recreation Assistant | 4/26/2005           |
| Timms, Donna      | Recreation Assistant | 6/6/2003            |
| Tom, Shiril       | Recreation Assistant | 6/26/2013           |

**Payroll Period of Decrease: March 28, 2015**

| <b>Name</b>         | <b>Title</b> | <b>Date of Hire</b> |
|---------------------|--------------|---------------------|
| Sormani, Dawn-Marie | Receptionist | 3/2/2009            |

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<sup>4</sup> GC 9(a)-(d) & GC 10(a).

The record evidence in this case establishes that Respondent had unilaterally decreased the work hours of these bargaining unit employees. For example, GC Exhibits 9(a) to (d) are charts of full-time employees employed by Respondent, excluding LPNs and CNAs, and the number of hours they were hired to work. These charts were prepared based on Respondent's payroll records and Respondent admitted to the accuracy of the data contained in these charts. [Tr. 13-16, GC 9(a)-(d)]. GC Exhibit 10(a) is a chart that shows the employees whose hours were decreased and the pay period in which their hours were decreased. (Tr. 16). GC Exhibits 10(b) through (h) are the payroll records for the four or five weeks immediately before and after the decreases, for the 20 employees whose hours were reduced. (Tr. 17-19)

To demonstrate the reduction, for example, page 1 of GC Exhibit 9(a) shows that Benjamin Bustos is a Dietary Aide who was hired on May 11, 2004, and his (weekly) standard hours at the date of hire was 40. GC Exhibit 10(b), payroll records for dietary aides, shows that Bustos' weekly hours were about 40 until the payroll period ending July 19, 2014, when his hours were reduced. Charts setting forth the number of hours worked immediately before and after the decreases for all 20 employees are attached and marked as Attachment 1<sup>5</sup>.

### Respondent's Defense

Respondent denies that the hours of these 20 employees were unilaterally reduced. At the hearing, Respondent contended that 10 to 12 payroll record periods for each employee were insufficient to demonstrate a reduction and proposed to offer five years of payroll records for each employee. However, Respondent did not thereafter offer these payroll records (other than for employee Andrew Hegarty) and no such records are in evidence. (Tr. 17-18, R6)

Respondent also denies that the hours of Andrew Hegarty, a maintenance worker, were reduced, and contends that he continued to have a 40-hour work week. In support, Respondent

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<sup>5</sup> The data in Attachment 1 was derived from Respondent's payroll records and codes. [GC 10(b) - (h) & GC 11].

offered the master schedule for the maintenance department for the period from December 6, 2015, to April 22, 2017, purporting to show that Hegarty was scheduled to work 40 hours per week with the exception of 4 pay periods. (R3, Tr. 46-50). It should be noted, however, that Hegarty's reductions began during the payroll period ending August 16, 2014, and not in December 2015. [GC 10(f)]. Further, the complete payroll records for Hegarty that was submitted by Respondent post hearing support the conclusion that Hegarty had enjoyed mostly 40-hour work weeks prior to August 16, 2014, but he thereafter worked under 40 hours per week during the remaining 8 out of 9 payroll periods in 2014. Those records further show that he worked less than 40 hours per week during most of 2015, and while his hours increased slightly in 2016, most of his work weeks were again less than 40 hours during 2017 and 2018. (R6)

Respondent also contends that Dawn-Marie Sormani's hours were reduced from 40 to 37.5 hours solely because her position changed from unit secretary to receptionist. In this regard, Respondent's witness, Maureen Montegari<sup>6</sup>, testified that Respondent's "wage and benefit summary shows that the hours are 37 and a half for most employees," so 37.5 hours would be appropriate for a receptionist position while a unit secretary position could be an exception and "could translate into a 40 hour work week." However, nowhere in the wage and benefit summary does it provide that most employees had a 37.5-hour work week<sup>7</sup>. Also, contrary to Montegari's claim that unit secretaries worked 40 hours per week, a review of GC 9(a) shows that Abraham Kalarikal, a unit secretary hired on August 30, 2010, had 37.5 hours and not 40. Finally, Respondent offered no personnel documentation to demonstrate that Sormani's

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<sup>6</sup> Montegari is employed by CareOne Management LLC, which provides management services to a region of about 50 nursing homes, including Respondent. She was the Regional Director of Human Services from January 2010 to 2012, when she was promoted to Vice President of Human Resources. (Tr. 20-21)

<sup>7</sup> The summary merely defines a full-time benefits eligible employee to be an employee who "regularly works 37.5 or more per week..." and "[e]mployees actively employed on a full-time basis regularly work 37.5 hours or more per week" are eligible for vacation, holiday pay and sick time."



reduction was due to her transfer of position. Most importantly, however, is Montegari's admission that she was not involved in Sormani's transfer or the decrease in her hours, so she had no personal knowledge as to the reason for the reduction to her hours. [Tr. 44-46, GC 9(a), R1].

As to the remaining 18 employees whose hours were also decreased, Montegari testified that based on their job classifications, their "normal schedule" would be 37.5, so the changes to their schedules were consistent with Respondent's scheduling policy since 2009. Respondent contends that with the revision of the wage and benefit summary in 2009, all full-time employees, with the exception of LPNs, RNs, and possibly rehabilitation technicians and recreation assistants, were hired and scheduled at 37.5 hours per week. (Tr. 24-29, R1) It should be noted, however, that with the exception of Shiril Tom and Rosilin Boby (both Recreation Assistants and considered an "exception" to the 37.5-hour policy), the remaining 16 employees were hired prior to 2009, and yet, their hours were not reduced until 2014. (Tr. 27-30) Further, this reduction is contrary to the representation made by Respondent's counsel in his email to William Massey dated June 16, 2017, stating that "at some point since 2012<sup>8</sup>, we have started to hire non-nursing staff at 37.5 weekly schedules. We grandfathered in the 40-hour employees who worked prior to us making this change." Clearly, the 18 remaining employees were not "grandfathered in" and indeed had their base weekly hours reduced. [GC 6 & 9(a)]

Respondent also argues that this allegation is time-barred by Section 10(b) of the Act. Relying solely on a 10-day notice dated July 17, 2015, and an unfair labor practice charge in Case 22-CA-159423 dated September 2, 2015, both filed by the Union, Respondent's counsel concluded that the Union must have had "communications back and forth with the employees,

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<sup>8</sup> Counsel later clarified in an email dated November 3, 2017, that Respondent began a practice of hiring full-time employees at 37.5 before the Union election. (GC 8)

and that they knew about the issues that we're dealing with today and they should have filed a charge and they were untimely.” (Tr. 53-56, R5 & R6) Respondent, however, offered no evidence to support this theory; to the contrary, its witness, Montegari, reluctantly admitted that she did not know whether in fact there were any communications between the employees and the Union at the time. (Tr. 70-72) Indeed, the parties stipulated that Respondent had not permitted the Union access to the facility while Respondent was challenging the Union's certification, and first permitted the Union access to the facility in May 2017. The parties further stipulated that during that same period, Respondent had not provided the Union with any documents or information related to the bargaining unit employees' terms and conditions of employment, and first produced such information in May 2017. (GC 4 ¶10 & 11). The instant charge was filed on August 16, 2017, well within the Section 10(b) period commencing in May 2017.

### **Respondent Unilaterally Suspended and Terminated Bargaining Unit Employees**

The parties stipulated, and Respondent admitted, that it had not provided the Union with notice or an opportunity to bargain prior to implementing serious discipline against bargaining unit employees [GC 1(e), GC (4)], as follows:

- On or about October 10, 2016, Respondent suspended Jasmine Gordon.
- On or about January 4, 2017, Respondent terminated Shantai Bills.
- On or about February 1, 2017, Respondent suspended Linda Rhoads.
- On or about March 23, 2017, Respondent suspended Jesus Mendez.

The record evidence establishes that these serious disciplines were discretionary in nature. Section IV of Respondent's Employee Handbook effective October 2007 (GC 5), sets forth Respondent's discretionary disciplinary policy, as follows:

#### **Disciplinary Action**

If your conduct is unsatisfactory, your Supervisor may provide guidance and support to help you make the necessary corrections. The Center has developed a disciplinary action process that focuses upon early correction of

misconduct, with the total responsibility for resolving the issues and concerns in your hand. Your Supervisor is there to provide support and coaching.

The following highlights a list of actions that the Center may use while administering discipline. Please note that these are guidelines only, and are not intended to imply a series of “steps” that will be followed in all instances. Any of the disciplinary actions described below, including termination, may be initiated at any stage of the process depending on the nature of the specific inappropriate behavior, conduct, or performance and other relevant factors.

- √ Verbal or Written Warning
- √ Suspension or Suspension Pending Further Investigation
- √ Final Written Warning
- √ Termination of Employment

#### **IV. ARGUMENTS**

##### **A. Respondent Unilaterally Decreased Bargaining Unit Employees’ Hours, in violation of Section 8(a)(5) of the Act.**

It is well settled that unilateral decisions made by an employer during the course of a collective-bargaining relationship concerning matters that are mandatory subjects of bargaining are generally regarded as a refusal to bargain. *NLRB v. Katz*, 369 U.S. 736 (1962). It is clear that reduction of hours worked by employees is a mandatory subject of bargaining. *Sheraton Hotel Waterbury*, 312 NLRB 304 (1993); *Top Job Bldg. Maintenance, Inc.*, 304 NLRB 902 (1991); *Venture Packaging*, 294 NLRB 544 (1989); *Nemacolin Country Club*, 291 NLRB 456 (1988). Absent “compelling economic considerations”, an employer “acts at its peril” by unilaterally changing working conditions during the pendency of election issues and where the final determination has not yet been made. And where the final determination on the objections results in the certification of representative the Board will find the employer to have violated Section 8(a)(5) and (1) of the Act for having made such unilateral changes. *Mike O’Connor Chevrolet*, 209 NLRB 701 (1974), enf. denied on other grounds, *NLRB v. Mike O’Connor*, 512 F.2d 684 (8<sup>th</sup> Cir. 1975).

In this case, the payroll records clearly establish that Respondent reduced the hours of the 20 bargaining unit employees in 2014 and 2015. The argument that the reductions were lawful because they conformed with Respondent's hiring and scheduling policy is without support or merit since most of these employees were hired prior to 2009, and their 40 hour-schedules were supposed to have been "grandfathered in", but they were not. More importantly, if Respondent's hiring/scheduling policy was changed from a 40-hour week to a 37.5 week in 2009, these employees' schedules should have been changed in 2009, and not at Respondent's whim or without any justifications five or six years later, at a time when the employees were represented by the Union.

Further, it is admitted by Respondent that it had not given prior notice of the reduction to the Union nor did Respondent afford the Union an opportunity to bargain with respect to the reduction in the employees' hours. Therefore, any argument that the Union had waived its right to bargain by not requesting bargaining is clearly without merit. As stated in *Ciba-Geigy Pharmaceutical Division*, 264 NLRB 1013, 1017 (1982):

The Board has long recognized that, where a union receives timely notice that the employer intends to change a condition of employment, it must promptly request that the employer bargain over the matter. To be timely, the notice must be given sufficiently in advance of the actual implementation of the change to allow a reasonable opportunity to bargain. However, if the notice is too short a time before implementation or because the employer has no intention of changing its mind, then the notice is nothing more than a fait accompli.

Here, Respondent never informed the Union about the reductions, and the Union did not learn of these changes until several years after they were implemented. Thus, there could be no doubt that the reductions were a fait accompli and that Respondent had no intention of bargaining with the Union.

Although the unilateral changes by Respondent occurred at a time when it was challenging the Union's certification, such does not privilege or justify its unilateral actions.

Under the “at-its-peril” doctrine, Respondent was liable for any bargaining violations that occurred between the election itself and the eventual resolution to election challenges that resulted in the Union’s victory. *Beverly Health and Rehabilitation Services, Inc.*, 332 NLRB No. 26 (2000).

The argument that the Union’s claim is time-barred is also non-meritorious; there is simply no evidence that the Union had any knowledge of the reductions until some time in May 2017, when Respondent finally allowed the Union limited access to the facility and began to respond to the Union’s requests for information relevant to the bargaining unit employees.

In light of the overwhelming and credible record evidence, it is respectfully requested that Respondent be found to have violated Section 8(a)(5) of the Act when it reduced the number of hours of work of employees in the bargaining unit without prior notice to the Union and without affording the Union an opportunity to bargain with it with respect to this change.

**B. Respondent Unilaterally Suspended and Terminated Bargaining Unit Employees, in violation of Section 8(a)(5) of the Act.**

In *Total Security Management Illinois 1, LLC*, 364 NLRB No. 106, slip op at 1 (2016), the Board held that in the interim period between a union’s certification and the existence of an initial collective-bargaining agreement, employers have an obligation to notify the union and give it an opportunity to bargain before imposing discretionary and serious discipline (in the form of a suspension, demotion, discharge, or analogous sanction) on an employee in the bargaining unit. The Board specifically held that if the employer engages in bargaining only after imposing the discipline, this does not cure the violation. *Id* at 13.

Thereafter, the Board in an unpublished order issued on July 23, 2018, adopted the ALJ’s recommendations in *Apex Linen Service, Inc.*, 2018 WL 2733700 (2018), citing *Total Security* and found the respondent to have violated Section 8(a)(1) and (5) of the Act by failing to notify

the Union before it discharged an employee during a period when the parties were negotiating for an initial collective-bargaining agreement. *Apex Linen Service*, id at 28.

In this case, it is stipulated, and Respondent agreed, that it had not provided notice to the Union or given the Union an opportunity to bargain before imposing serious discipline - suspending and terminating the four employees at issue. There is also no doubt that based on the language of Respondent's Employee Handbook, Respondent's disciplinary system is discretionary. A finding is therefore respectfully requested that Respondent unlawfully discharged and suspended the four named bargaining unit employees, in violation of Section 8(a)(5) of the Act.

#### **IV. CONCLUSION**

Based on the credible evidence in the record and the foregoing reasoning, the Respondent has violated Sections 8(a)(1) and (5) as alleged in the Complaint. General Counsel respectfully requests that a remedial order be issued requiring Respondent to:

- Cease and desist from engaging in the unlawful conduct alleged.
- Recognize and bargain with the Union.
- Make whole Unit employees for any loss of earnings and other benefits resulting from their suspension, termination and reductions in hours.
- Offer reinstatement to terminated employee, Shantai Bills.

Dated at Newark, New Jersey  
August 14, 2018.

Respectfully Submitted,

/s/ *Sharon Chau*

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**ATTACHMENT 1**

**Benjamin Bustos**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 40                         | 40                         |
| 5/24/2014                    | 31.75 + 8 sick hours       | 40                         |
| 6/7/2014                     | 40                         | 40                         |
| 6/21/2014                    | 31.50 + 8 sick hours       | 39.75                      |
| 7/5/2014                     | 40                         | 40                         |
| 7/19/2014                    | 40                         | 31.25 + 8 sick hours       |
| 8/2/2014                     | 34.25                      | 38.50                      |
| 8/16/2014                    | 38.75                      | 38                         |
| 8/30/2014                    | 38                         | 22.5 sick hours            |
| 9/13/2014                    | 30 + 8 holiday hours       | 37.5                       |
| 9/27/2014                    | 37.5                       | 37.5                       |
| 10/11/2014                   | 37.5                       | 37.5                       |

**Evelyn Coronado**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b>       |
|------------------------------|----------------------------|----------------------------------|
| 5/10/2014                    | 32 + 8 sick hours          | 32 + 8 vacation hours            |
| 5/24/2014                    | 40                         | 32 + 8 sick hours                |
| 6/7/2014                     | 40                         | 28.5 + 10.5 sick hours           |
| 6/21/2014                    | 40                         | 40                               |
| 7/5/2014                     | 24 + 16 vacation hours     | 32 + 8 holidays/8 vacation hours |
| 7/19/2014                    | 40                         | 37.5                             |
| 8/2/2014                     | 36 + 7.5 sick hours        | 22.5 + 15 vacation hours         |
| 8/16/2014                    | 37.5                       | 30 + 7.5 vacation hours          |
| 8/30/2014                    | 37.5                       | 37.5                             |
| 9/13/2014                    | 37.5 + holiday hours       | 22.5 + 15 Vacation hours         |
| 9/27/2014                    | 37.5                       | 37.75                            |
| 10/11/2014                   | 37.5                       | 22 + 15 vacation hours           |

**Elaine Farr**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 32 + 8 sick hours          | 40                         |
| 5/24/2014                    | 40                         | 32 + 8 vacation hours      |
| 6/7/2014                     | 39.97 + 8 holiday hours    | 40                         |
| 6/21/2014                    | 24 + 16 vacation hours     | 40                         |

|            |                                       |                         |
|------------|---------------------------------------|-------------------------|
| 7/5/2014   | 32 + 8 vacation hours                 | 40 + 8 holiday hours    |
| 7/19/2014  | 40                                    | 30 + 7.5 sick hours     |
| 8/2/2014   | 7.5 + 30 vacation hours               | 30 + 7.5 vacation hours |
| 8/16/2014  | 37.5                                  | 38.25                   |
| 8/30/2014  | 38                                    | 37.5                    |
| 9/13/2014  | 20 + 5.58 holiday hours               | 25                      |
| 9/27/2014  | 30.5 + 8 holiday hours/7.5 sick hours | 38                      |
| 10/11/2014 | 37.5                                  | 38                      |

**Enrique Fontanez**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b>        | <b>Week 2 - # of hours</b> |
|------------------------------|-----------------------------------|----------------------------|
| 5/10/2014                    | 39.5                              | 40                         |
| 5/24/2014                    | 40                                | 40                         |
| 6/7/2014                     | 31 + 8 holiday hours/9 sick hours | 40                         |
| 6/21/2014                    | 39.5                              | 39.5                       |
| 7/5/2014                     | 40                                | 40                         |
| 7/19/2014                    | 31.75 + 7.5 vacation hours        | 37                         |
| 8/2/2014                     | 7 + 30 vacation hours             | 37.5 vacation hours        |
| 8/16/2014                    | 30 + 7.5 vacation hours           | 37.50                      |
| 8/30/2014                    | 37.5                              | 37.5                       |
| 9/13/2014                    | 37.75 + 8 holiday hours           | 30 + 7.5 sick hours        |
| 9/27/2014                    | 30 + 7.5 vacation hours           | 22.5 + 15 vacation hours   |

**Vicente Ricarze**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 39.50                      | 37.5                       |
| 5/24/2014                    | 31 + 8 vacation hours      | 39.25                      |
| 6/7/2014                     | 39.25 + 7.98 holiday hours | 23 + 16 vacation hours     |
| 6/21/2014                    | 31.75 + 8 vacation hours   | 36                         |
| 7/5/2014                     | 39.25                      | 38 + 7.92 holiday hours    |
| 7/19/2014                    | 39.5                       | 25.75 + 7.5 vacation hours |
| 8/2/2014                     | 37.5                       | 36.75                      |
| 8/16/2014                    | 37.5                       | 37.5 vacation hours        |
| 8/30/2014                    | 22 + 15 vacation hours     | 37.5                       |
| 9/13/2014                    | 37.25 + 7.82 holiday hours | 37.5                       |
| 9/27/2014                    | 37.5                       | 25.5 + 8 sick hours        |
| 10/11/2014                   | 37                         | 37.5                       |
| 10/25/2014                   | 37.5                       | 36.75                      |



**Allan Tolentino**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 4/12/2014                    | 39.75                      | 38.25                      |
| 4/26/2014                    | 39.25                      | 32 + 8 sick hours          |
| 5/10/2014                    | 39.50                      | 39.75                      |
| 5/24/2014                    | 38.25                      | 32.5 + 8 vacation hours    |
| 6/7/2014                     | 31.5 + 8 holiday hours     | 15.75                      |
| 6/21/2014                    | 39.5                       | 40                         |
| 7/5/2014                     | 31.25 + 8 vacation hours   | 39.5 + 7.5 holiday hours   |
| 7/19/2014                    | 39.25                      | 29.5 + 7.5 sick hours      |
| 8/2/2014                     | 37.5                       | 37.5                       |
| 8/16/2014                    | 37                         | 37.25                      |
| 8/30/2014                    | 29.75 + 7.5 sick hours     | 39                         |
| 9/13/2014                    | 37.75 + 7.43 holiday hours | 38.75                      |
| 9/27/2014                    | 38.75                      | 29.75 + 7.5 vacation hours |
| 10/11/2014                   | 37                         | 37.5                       |
| 10/25/2014                   | 37.5                       | 36.75                      |

**George Varghese**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b>      | <b>Week 2 - # of hours</b>               |
|------------------------------|---------------------------------|--|
| 4/12/2014                    | 40                              | 40                                       |
| 4/26/2014                    | 32 + 8 sick hours               | 24 + 8 sick hours + 8 vacation hours     |
| 5/10/2014                    | 40                              | 40                                       |
| 5/24/2014                    | 40                              | 40                                       |
| 6/7/2014                     | 32 + 8 holiday hours/8 vacation | 40                                       |
| 6/21/2014                    | 40                              | 40                                       |
| 7/5/2014                     | 40                              | 27.5 + 8 holiday hours /8 vacation hours |
| 7/19/2014                    | 32 + 7.5 vacation hours         | 38                                       |
| 8/2/2014                     | 37.5                            | 37.5                                     |
| 8/16/2014                    | 37.5                            | 37.5 vacation hours                      |
| 8/30/2014                    | 37.5                            | 30 + 7.5 vacation hours                  |
| 9/13/2014                    | 37.5 + 7.98 holiday hours       | 37.5                                     |
| 9/27/2014                    | 37.5                            | 25.5 + 8 sick hours                      |
| 10/11/2014                   | 37                              | 37.5                                     |
| 10/25/2014                   | 37.5                            | 36.75                                    |

**Desinette Bazile****Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 40                         | 39.25                      |
| 5/24/2014                    | 40                         | 39.5                       |
| 6/7/2014                     | 40 + 7.83 holiday hours    | 40                         |
| 6/21/2014                    | 40                         | 40                         |
| 7/5/2014                     | 40                         | 40                         |
| 7/19/2014                    | 32 + 7.5 sick hours        | 30 + 7.5 sick hours        |
| 8/2/2014                     | 37.5                       | 37.5                       |
| 8/16/2014                    | 22.5                       |                            |
| 8/30/2014                    | 7.5                        | 37.25                      |
| 9/13/2014                    | 37 + 7.17 holiday hours    | 37.5                       |
| 9/27/2014                    | 37.5                       | 36.75                      |

**Julienne Benoit****Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b>    |
|------------------------------|----------------------------|-------------------------------|
| 5/10/2014                    | 39.5                       | 40                            |
| 5/24/2014                    | 32                         | 40                            |
| 6/7/2014                     | 40 + 8 holiday hours       | 40                            |
| 6/21/2014                    | 40                         | 40                            |
| 7/5/2014                     | 40                         | 40                            |
| 7/19/2014                    | 40                         | 37.5                          |
| 8/2/2014                     | 37.25                      | 37.5 vacation hours           |
| 8/16/2014                    | 7.5 + 30 sick hours        | 15 sick + 22.5 vacation hours |
| 8/30/2014                    | 30 + 7.5 sick hours        | 37.5                          |
| 9/13/2014                    | 37 + 8 holiday hours       | 37.75                         |
| 9/27/2014                    | 29.75 + 7.5 sick hours     | 36.75                         |

**Paulette Murray****Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b>   | <b>Week 2 - # of hours</b> |
|------------------------------|------------------------------|----------------------------|
| 4/12/2014                    | 40                           | 40                         |
| 4/26/2014                    | 32 + 8 vacation hours        | 40                         |
| 5/10/2014                    | 32 + 8 vacation hours        | 40                         |
| 5/24/2014                    | 32                           | 40                         |
| 6/7/2014                     | 40 + 8 holiday hours         | 32                         |
| 6/21/2014                    | 32 + 8 sick/8 vacation hours | 32 + 8 vacation hours      |
| 7/5/2014                     | 40                           | 40 + 8 holiday hours       |
| 7/19/2014                    | 40                           | 37.5                       |
| 8/2/2014                     | 37.5                         | 37.5                       |

|           |                           |                          |
|-----------|---------------------------|--------------------------|
| 8/16/2014 | 30                        | 30 +7.5 vacation hours   |
| 8/30/2014 | 30 + 7.5 vacation hours   | 30 + 8 sick              |
| 9/13/2014 | 37.5 + 7.92 holiday hours | 22.5 + 15 vacation hours |
| 9/27/2014 | 37.5 vacation hours       | 37.5 vacation hours      |

**Charles Abouzeid**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 40                         | 40                         |
| 5/24/2014                    | 40                         | 40                         |
| 6/7/2014                     | 40 + 8 holiday hours       | 40                         |
| 6/21/2014                    | 40.25                      | 40                         |
| 7/5/2014                     | 40                         | 40+5.12 OT+8 holiday hours |
| 7/19/2014                    | 40                         | 37.5                       |
| 8/2/2014                     | 30 + 7.5 sick hours        | 37.5                       |
| 8/16/2014                    | 37.5                       | 30 + 7.5 vacation hours    |
| 8/30/2014                    | 37.5                       | 22.5 + 15 vacation hours   |
| 9/13/2014                    | 37.25 + 8 holiday hours    | 37.75                      |
| 9/27/2014                    | 37.5                       | 37.5                       |

**Jean Ramkhalawan**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 40                         | 40                         |
| 5/24/2014                    | 39.5                       | 40                         |
| 6/7/2014                     | 39.75 + 7.03 holiday hours | 40                         |
| 6/21/2014                    | 40                         | 32 + 8 sick hours          |
| 7/5/2014                     | 40 + 1.5 OT                | 40 + 7.03 holiday hours    |
| 7/19/2014                    | 40 + .25 OT                | 37.5                       |
| 8/2/2014                     | 30 + 7.5 sick hours        | 7.5 + 30 vacation hours    |
| 8/16/2014                    | 37.5                       | 37.5                       |
| 8/30/2014                    | 37.25                      | 30                         |
| 9/13/2014                    | 37.5 + 8 holiday hours     | 30 + 8 sick hours          |
| 9/27/2014                    | 37.5 + 7.5 sick hours      | 37.5                       |

**Edgardo Irabon**

**Payroll Period of Decrease: 7/19/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 5/10/2014                    | 39.5                       | 40                         |
| 5/24/2014                    | 40                         | 40                         |
| 6/7/2014                     | 39.75 + 8 holiday hours    | 40                         |

|           |                            |                             |
|-----------|----------------------------|-----------------------------|
| 6/21/2014 | 40                         | 32.25 + 8 sick hours        |
| 7/5/2014  | 40 + .25 OT                | 40+.25 OT + 8 holiday hours |
| 7/19/2014 | 40                         | 37.75                       |
| 8/2/2014  | 37.75                      | 37.5 vacation hours         |
| 8/16/2014 | 30 vacation hours          | 38.5                        |
| 8/30/2014 | 38.5                       | 38.5                        |
| 9/13/2014 | 38.25 + 7.95 holiday hours | 38.25                       |
| 9/27/2014 | 38.25                      | 38.75                       |

**Andrew Hegarty**

**Payroll Period of Decrease: 8/16/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b>               | <b>Week 2 - # of hours</b>      |
|------------------------------|--|---------------------------------|
| 5/10/2014                    | 40.25                                    | 40                              |
| 5/24/2014                    |  | 40                              |
| 6/7/2014                     | 29.75 + 5.08 holiday hours /8 sick hours | 40                              |
| 6/21/2014                    | 40                                       | 32.25 + 8 vacation hours        |
| 7/5/2014                     | 40                                       | 40 + 3.5 OT+ 5.08 holiday hours |
| 7/19/2014                    | 40                                       | 40                              |
| 8/2/2014                     | 40                                       | 40 + 1.5 OT                     |
| 8/16/2014                    | 7.5 + 7.5 sick hours /15 vacation hours  | 37.75                           |
| 8/30/2014                    | 38                                       | 37.5                            |
| 9/13/2014                    | 23.25 + 7.5 holiday hours /15 sick hours | 18.25 + 15 vacation hours       |
| 9/27/2014                    | 40 + 1.75 OT + 5 RHR                     | 38                              |
| 10/11/2014                   | 37.5                                     | 37.5                            |

**Mariamamma Abraham**

**Payroll Period of Decrease: 2/1/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 10/26/2013                   | 40                         | 40                         |
| 11/9/2013                    | 38.5                       | 40                         |
| 11/23/2013                   | 40                         | 4 + 8 sick hours           |
| 12/7/2013                    | 24 + 7.5 holiday hours     | 40                         |
| 12/21/2013                   | 40                         | 38.75                      |
| 1/4/2014                     | 36 + 7.07 holiday hours    | 31.75 + 7 holiday hours    |
| 1/18/2014                    | 40                         | 40                         |
| 2/1/2014                     | 35.5                       | 37.5                       |
| 2/15/2014                    | 21.25 + 15 vacation hours  | 37.25                      |
| 3/1/2014                     | 37.5 + 7.27 holiday hours  | 37.5                       |
| 3/15/2014                    | 37.5                       | 30 + 7.5 sick hours        |

**Rosilin Boby****Payroll Period of Decrease: 2/1/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b>                | <b>Week 2 - # of hours</b> |
|------------------------------|---|----------------------------|
| 11/9/2013                    | 40  | 40                         |
| 11/23/2013                   | 40  | 40                         |
| 12/7/2013                    | 40 + 7.5 holiday hours                    | 40                         |
| 12/21/2013                   | 40  | 40                         |
| 1/4/2014                     | 24 + 7.5 holiday hours /15 vacation hours | 40 + 7.5 holiday hours     |
| 1/18/2014                    | 40  | 40                         |
| 2/1/2014                     | 38  | 37.5                       |
| 2/15/2014                    | 29.75 + 7.5 vacation hours                | 37.25                      |
| 3/1/2014                     | 37.5 + 7.5 holiday hours                  | 37.5                       |
| 3/15/2014                    | 37.5                                      | 37.5                       |
| 3/29/2014                    | 37.5                                      | 37.5                       |

**Donna Timms****Payroll Period of Decrease: 2/1/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 11/9/2014                    | 40                         | 40                         |
| 11/23/2013                   | 40 vacation hours          | 40 vacation hours          |
| 12/7/2013                    | 40 + 8 holiday hours       | 40                         |
| 12/21/2013                   | 40                         | 38 + 2 sick hours          |
| 1/4/2014                     | 39.5 + 8 holiday hours     | 39.5 + 8 holiday hours     |
| 1/18/2014                    | 40                         | 30 + 8 vacation hours      |
| 2/1/2014                     | 38                         | 37.5                       |
| 2/15/2014                    | 31.75                      | 18 + 18 vacation hours     |
| 3/1/2014                     | 37.5 + 8 holiday hours     | 37.5                       |
| 3/15/2014                    | 37.5                       | 37.5                       |
| 3/29/2014                    | 37.5                       | 37.5                       |

**Shiril Tom****Payroll Period of Decrease: 2/1/2014**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b> |
|------------------------------|----------------------------|----------------------------|
| 11/9/2013                    | 40                         | 40                         |
| 11/23/2013                   | 40                         | 40                         |
| 12/7/2013                    | 40 + 7.5 holiday hours     | 39.75                      |
| 12/21/2013                   | 40                         | 40                         |
| 1/4/2014                     | 40 + 7.5 holiday hours     | 39.75 + 7.5 holiday hours  |
| 1/18/2014                    | 40                         | 40                         |
| 2/1/2014                     | 38                         | 37.5                       |

|           |                          |                       |
|-----------|--------------------------|-----------------------|
| 2/15/2014 | 37.5                     | 30 + 8 vacation hours |
| 3/1/2014  | 37.5 + 7.5 holiday hours | 37.5                  |
| 3/15/2014 | 37.5                     | 37.5                  |
| 3/29/2014 | 23                       | 23                    |

**Dawn-Marie Sormani**

**Payroll Period of Decrease: 3/28/2015**

| <b>Payroll Period Ending</b> | <b>Week 1 - # of hours</b> | <b>Week 2 - # of hours</b>  |
|------------------------------|----------------------------|-----------------------------|
| 1/17/2015                    | 40 + 5.75 OT               | 34.75                       |
| 1/31/2015                    | 24 + 16 sick hours         | 40 vacation hours           |
| 2/14/2015                    | 40 + .25 OT                | 37.5                        |
| 2/28/2015                    | 37.75 + 7.5 holiday hours  | 30.25 + 8 vacation          |
| 3/14/2015                    | 40 + 1.5 OT                | 38                          |
| 3/28/2015                    | 37.75                      | 36.50 + 1.33 vacation hours |
| 4/11/2015                    | 37.5                       | 37.5                        |
| 4/25/2015                    | 38                         | 37.75                       |
| 5/9/2015                     | 37.75                      | 37.5                        |
| 5/23/2015                    | 37.75                      | 38.25                       |
| 6/6/2015                     | 30 + 7.5 holiday hours     | 37.5                        |

## **CERTIFICATION**

This is to certify that copies of the foregoing Post-Hearing brief on Behalf of the General Counsel to the Administrative Law Judge have been duly served on the Administrative Law Judge, Respondent's counsel and Charging Party's counsel on August 14, 2018 as follows:

### **BY ELECTRONIC FILING**

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